

ASSEMBLY BILL

No. 2259

Introduced by Assembly Member Galgiani

February 18, 2010

An act to add Section 1349.3 to the Health and Safety Code, and to amend Section 740 of, and to add Section 10112.7 to, the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 2259, as introduced, Galgiani. Health care coverage: nonprofit charitable organizations.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), provides for the licensure and regulation of health care service plans, as defined, by the Department of Managed Health Care. Existing law also provides for the regulation of health insurers by the Department of Insurance and requires insurers to obtain a certificate of authority from the Insurance Commissioner. Existing law provides an exemption from those licensure and certification requirements for plans operated by a public entity or joint labor management trust if, among other requirements, the plan maintains a fiscally sound operation and makes adequate provision against the risk of insolvency, as evidenced by financial statements submitted to the Director of the Department of Managed Health Care, as specified.

This bill would exempt a plan operated by a joint venture formed by 2 or more nonprofit charitable organizations, as defined, from the licensure and certification requirements if the plan satisfies certain criteria, including maintaining a fiscally sound operation and making adequate provision against the risk of insolvency, as evidenced by financial statements submitted to the Director of the Department of

Managed Health Care, as specified, and submitting a declaration under penalty of perjury stating the plan's compliance with those criteria. The bill would also authorize a joint venture formed between 2 or more nonprofit charitable organizations to contract with a health care service plan or health insurer for the purpose of providing health care coverage to the employees and retirees, and dependents thereof, of the participating nonprofit charitable organizations.

By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1349.3 is added to the Health and Safety
- 2 Code, to read:
- 3 1349.3. (a) For purposes of this section, "nonprofit charitable
- 4 organization" means a corporation incorporated pursuant to the
- 5 Nonprofit Corporation Law (Division 2 (commencing with Section
- 6 5000) of Title 1 of the Corporations Code) that is exempt from
- 7 taxation pursuant to Section 501(c) of the Internal Revenue Code
- 8 and Section 23710d of the Revenue and Taxation Code.
- 9 (b) A health care service plan, including a self-insured
- 10 reimbursement plan that pays for or reimburses any part of the
- 11 cost of health care services, operated by a joint venture formed by
- 12 two or more nonprofit charitable organizations that satisfies all of
- 13 the following criteria is exempt from this chapter:
- 14 (1) Provides services or reimbursement only to employees,
- 15 retirees, and the dependents of those employees and retirees, of
- 16 any participating nonprofit charitable organization, but not to the
- 17 general public.
- 18 (2) Provides funding for the program.
- 19 (3) Provides that providers are reimbursed solely on a
- 20 fee-for-service basis, so that providers are not at risk in contracting
- 21 arrangements.

1 (4) Complies with Section 1378 and, to the extent that a plan
2 contracts directly with providers for health care services, complies
3 with Section 1379.

4 (5) Does not reduce or change current benefits except in
5 accordance with collective bargaining agreements, or as otherwise
6 authorized by the governing body in the case of unrepresented
7 employees, and provides, pays for, or reimburses at least part of
8 the cost of all basic health care services as defined in subdivision
9 (b) of Section 1345. Plans covering only a single specialized health
10 care service, including dental, vision, or mental health services,
11 shall not be required to cover all basic health care services.

12 (6) Refrains from any conduct that constitutes fraud or dishonest
13 dealing or unfair competition, as defined by Section 17200 of the
14 Business and Professions Code, and notifies enrollees of their right
15 to file complaints with the director regarding any violation of this
16 exemption.

17 (7) Maintains a fiscally sound operation and makes adequate
18 provision against the risk of insolvency so that enrollees are not
19 at risk, individually or collectively, as evidenced by audited
20 financial statements submitted to the director as of the end of the
21 plan's fiscal year, within 180 days after the close of that fiscal
22 year. The financial statements shall be accompanied by a report,
23 certificate, or opinion of an independent certified public accountant.
24 The financial statements shall be prepared in accordance with
25 generally accepted accounting principles. The audit shall be
26 conducted in accordance with generally accepted auditing
27 standards. Upon request, the governing body of the plan shall
28 provide copies thereof, without charge, to any enrollee or
29 recognized and participating nonprofit charitable organization.

30 (8) Submits with the annual financial statements required under
31 paragraph (7), a declaration, which shall conform to Section 2015.5
32 of the Code of Civil Procedure, executed by a plan official
33 authorized by the governing body of the plan, that the plan
34 complies with this subdivision.

35 (b) The director's responsibilities under this section shall be
36 limited to enforcing compliance with this section. Nothing in this
37 section shall impair or impede the director's enforcement authority
38 or the remedies available under this chapter, including, but not
39 limited to, the termination of the plan's exemption under this
40 section.

1 (c) Nothing in this section shall be construed to prohibit a
2 recognized and participating nonprofit charitable organization
3 from filing a complaint with the director regarding a violation of
4 this section.

5 (d) A joint venture formed between two or more nonprofit
6 charitable organizations may contract with a health care service
7 plan for the purpose of providing health care coverage to the
8 employees and retirees, and dependents thereof, of the participating
9 nonprofit charitable organizations. Notwithstanding subdivision
10 (b), all requirements of this chapter shall apply to a contract entered
11 into pursuant to this subdivision.

12 SEC. 2. Section 740 of the Insurance Code is amended to read:

13 740. (a) Notwithstanding any other provision of law, and
14 except as provided herein, any person or other entity that provides
15 coverage in this state for medical, surgical, chiropractic, physical
16 therapy, speech pathology, audiology, professional mental health,
17 dental, hospital, or optometric expenses, whether the coverage is
18 by direct payment, reimbursement, or otherwise, shall be presumed
19 to be subject to the jurisdiction of the department unless the person
20 or other entity shows that while providing the services it is subject
21 to the jurisdiction of another agency of this or another state or the
22 federal government.

23 (b) A person or entity may show that it is subject to the
24 jurisdiction of another agency of this or another state or the federal
25 government by providing to the commissioner the appropriate
26 certificate or license issued by the other governmental agency that
27 permits or qualifies it to provide those services for which it is
28 licensed or certificated.

29 (c) Any person or entity that is unable to show that it is subject
30 to the jurisdiction of another agency of this or another state or the
31 federal government, shall submit to an examination by the
32 commissioner to determine the organization and solvency of the
33 person or the entity, and to determine whether the person or entity
34 is in compliance with the applicable provisions of this code, and
35 shall be required to obtain a certificate of authority to do business
36 in California and be required to meet all appropriate reserve,
37 surplus, capital, and other necessary requirements imposed by this
38 code for all insurers.

39 (d) Any person or entity unable to show that it is subject to the
40 jurisdiction of another agency of this or another state or the federal

1 government shall be subject to all appropriate provisions of this
2 code regarding the conduct of its business.

3 (e) The department shall prepare and maintain for public
4 inspection a list of those persons or entities described in subdivision
5 (a) that are not subject to the jurisdiction of another agency of this
6 or another state or the federal government and that the department
7 knows to be operating in this state. There shall be no liability of
8 any kind on the part of the state, the department, and its employees
9 for the accuracy of the list or for any comments made with respect
10 to it.

11 (f) Any administrator licensed by the department who advertises
12 or administers coverage in this state described in subdivision (a),
13 that is provided by any person or entity described in subdivision
14 (c), and where the coverage does not meet all pertinent
15 requirements specified in this code and that is not provided or
16 completely underwritten, insured or otherwise fully covered by an
17 admitted life or disability insurer, hospital service plan or health
18 care service plan, shall advise and disclose to any purchaser,
19 prospective purchaser, covered person or entity, and any production
20 agency licensed by the department involved in the transaction, all
21 financial and operational information relative to the content and
22 scope of the plan and, specifically, as to the lack of insurance or
23 other coverage.

24 Any production agency obtaining knowledge of any coverage
25 relative to the content and scope of a hospital service plan or health
26 care service plan, as required under this subdivision, shall advise
27 and disclose to any purchaser, prospective purchaser, covered
28 person or entity, the knowledge regarding the content and scope
29 of the plan and, specifically, as to the lack of insurance by an
30 admitted carrier or other qualified plan.

31 (g) A health care service plan, as defined in Chapter 2.2
32 (commencing with Section 1340) of Division 2 of the Health and
33 Safety Code, shall not be subject to this section.

34 (h) The department shall notify, in writing, the Director of the
35 Department of Managed Health Care whenever it determines that
36 a multiple employer trust qualifies as a health care service plan
37 subject to Chapter 2.2 (commencing with Section 1340) of Division
38 2 of the Health and Safety Code.

39 (i) Any health care service plan, including a self-insured
40 reimbursement plan that pays for or reimburses any part of the

1 cost of health care services, operated by any city, county, city and
2 county, public entity, or political subdivision, or a public joint
3 labor management trust as described in subdivision (c) of Section
4 1349.2 of the Health and Safety Code, that is exempt pursuant to
5 Section 1349.2 of the Health and Safety Code from the
6 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2
7 (commencing with Section 1340) of Division 2 of the Health and
8 Safety Code), is also exempt from this code.

9 *(j) Any health care service plan, including a self-insured*
10 *reimbursement plan that pays for or reimburses any part of the*
11 *cost of health care services, operated by a joint venture formed*
12 *by two or more nonprofit charitable organizations as described*
13 *in subdivision (b) of Section 1349.3 of the Health and Safety Code,*
14 *that is exempt pursuant to Section 1349.3 of the Health and Safety*
15 *Code from the Knox-Keene Health Care Service Plan Act of 1975*
16 *(Chapter 2.2 (commencing with Section 1340) of Division 2 of the*
17 *Health and Safety Code), is also exempt from this code.*

18 SEC. 3. Section 10112.7 is added to the Insurance Code, to
19 read:

20 10112.7. (a) For purposes of this section, “nonprofit charitable
21 organization” means a corporation incorporated pursuant to the
22 Nonprofit Corporation Law (Division 2 (commencing with Section
23 5000) of Title 1 of the Corporations Code) that is exempt from
24 taxation pursuant to Section 501(c) of the Internal Revenue Code
25 and Section 23710d of the Revenue and Taxation Code.

26 (b) A joint venture formed between two or more nonprofit
27 charitable organizations may contract with a health insurer for the
28 purpose of providing health care coverage to the employees and
29 retirees, and dependents thereof, of the participating nonprofit
30 charitable organizations. All requirements of this code shall apply
31 to a contract entered into pursuant to this subdivision.

32 SEC. 4. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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